

**STATE OF DELAWARE**

**MOTOR FUEL AND SPECIAL FUEL  
LAW AND REGULATIONS**

**DEPARTMENT OF TRANSPORTATION**

**DIVISION OF MOTOR VEHICLES**

**MOTOR FUEL TAX ADMINISTRATION**

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**STATE OF DELAWARE  
TITLE 30, DELAWARE CODE, CHAPTER 51  
MOTOR FUEL AND SPECIAL FUEL TAX LAW**

**Subchapter I. Gasoline**

**§ 5101. Definitions.**

As used in this chapter:

- (1) "Distributor" includes any person, association of persons, firm or corporation, wherever resident or located, who imports or causes to be imported into the State gasoline, as defined in this section, for use, distribution, storage or sale after the gasoline reaches the State or who, being in the business of selling and or distributing gasoline in bulk quantities, desires to purchase gasoline tax free from another distributor for resale within this State or for export from this State; and also any person, association of persons, firm or corporation who produces, refines, manufactures or compounds, or causes to be produced, refined, manufactured or compounded gasoline as defined in this section within the State.
- (2) "Retailer" means any person engaged in the sale of gasoline within this State who is not licensed as a distributor.
- (3) "Person" includes every natural person, fiduciary, association of persons or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.
- (4) "Gasoline" includes all products commonly or commercially known or sold as gasoline, including gasohol, casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating spark-ignited internal combustion engines. The term "gasoline" does not include liquefied gases such as propane, butane or pentane, or mixtures of the same, nor any product:
  - a. Having an ASTM Designation D908 research octane number of less than 70; or
  - b. Having a Reid vapor pressure at 100ø F. of more than 30 pounds.
- (5) A product will be considered "gasohol" when it is composed of 1 part anhydrous ethyl alcohol (ethanol) and 9 parts unleaded gasoline.
- (6) "Department" means Department of Transportation.
- (7) "Aviation gasoline" is gasoline manufactured and distributed exclusively for use in internal combustion aircraft engines.

(30 Del. C. 1953, § 5101; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24A; 62 Del. Laws, c. 380, §§ 1, 2; 65 Del. Laws, c. 297, §§ 1-3; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 575, § 11.)

**§ 5102. License for retail sale of gasoline; requirement, issuance, term, fee and display.**

Every person engaged in the retail sale of gasoline shall, before engaging in such business, procure from the Department of Transportation a license for each establishment operated by such person. Such license shall be issued by the Department and shall expire on the 30th day of June next following, subject to such reasonable regulations as the Department shall provide. Every person desiring to continue to engage in the retail sale of gasoline shall annually thereafter on the 1st day of July procure from the Department a license for such establishment operated by such person, which shall expire on the 30th day of June next following, subject to such reasonable regulations as the Department shall provide. A license fee of \$5 shall be paid for the issuing of every such license and the Department shall supply a certificate, which the licensee shall publicly display in a manner to be regulated by the Department. Retailers participating in the Small Retail Gasoline Station

Assistance Loan Fund established in Chapter 74 of Title 7, must, as a condition of their license, make their loan payments as prescribed therein; if their fuel supplier is not a distributor licensed under this chapter, then the retailer must file its own fuel tax return with the Department of Transportation for this purpose.

(30 Del. C. 1953, § 5102; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 64 Del. Laws, c. 365, § 4; 64 Del. Laws, c. 368, § 1; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 73.)

**§ 5103. License for distributor of gasoline; requirement, application, bond and fee.**

(a) No distributor shall receive, use, sell or distribute any gasoline or engage in business within this State unless such distributor is the holder of an uncanceled license issued by the Department of Transportation to engage in such business. To procure such license, a distributor shall file with the Department an application under oath and in such form as the Department may prescribe, setting forth:

- (1) The name under which the distributor will transact business within the State;
- (2) The location, with street number address of its principal office or place of business within this State; and
- (3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country or the laws of the United States, it shall also file with such application a certified copy of the certificate issued by the Secretary of State of Delaware showing that such corporation is authorized to transact business in the State.

(b) Upon the filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for in § 5107 of this title shall be filed with the Department of Transportation. No license shall be issued upon any application unless accompanied by such bond.

(c) Upon the filing of the application for a license, a filing fee of \$10 shall be paid to the Department of Transportation.

(d) As a condition of their license, distributors shall make the required loan payments for themselves or their retailer customers who:

- (1) Participate in the Small Retail Gasoline Station Assistance Loan Fund, established in Chapter 74 of Title 7; and
- (2) Provide these funds to the distributor.

(30 Del. C. 1953, § 5103; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 64 Del. Laws, c. 365, § 5; 64 Del. Laws, c. 368, § 2; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 74.)

**§ 5104. Issuance of distributor's license; term of license.**

The application referred to in § 5103 of this title, in proper form having been accepted for filing, the filing fee paid and the bond having been accepted and approved, the Department of Transportation shall, except as provided in this chapter, issue to such distributor a license to transact business as a distributor in this State. Such license shall expire on the 30th of June next following. Every distributor desiring to continue as a distributor shall apply for and procure a license before the 1st day of July each year. Each distributor shall be assigned a license number upon qualifying for a license under this subchapter.

(30 Del. C. 1953, § 5104; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 473, § 1; 62 Del. Laws, c. 380, § 3; 68 Del. Laws, c. 290, § 184.)

**§ 5105. Refusal of distributor's license; grounds.**

If any application for a license to transact business as a distributor in this State shall be filed by any person whose license shall at any time theretofore have been cancelled for cause, or in case the Department of Transportation shall be of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall therefore have been cancelled for cause, the Department of Transportation, after a hearing, of which the applicant shall be given 5 days' notice in writing and at which the applicant shall have the right to appear in person or by a counsel and present testimony, may refuse to issue to such person a license to transact business as a distributor in this State.

(30 Del. C. 1953, § 5105; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

**§ 5106. Assignability of distributor's license.**

The license issued under this subchapter by the Department of Transportation shall not be assignable and is valid only for the distributor in whose name it was issued.

(30 Del. C. 1953, § 5106; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

**§ 5107. Bond of licensed distributor.**

- (a) Every distributor shall file with the Department of Transportation a bond in the approximate sum of 3 times the average monthly gasoline tax due or estimated to be due by such distributor under the existing law of the State. In no case shall such bond be less than \$5,000 nor more than \$200,000. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the distributor's license is revoked for cause, or otherwise cancelled or surrendered.
- (b) The bond shall be in such form as may be approved by the Department, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such distributor to the Department of any and all gasoline taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.
- (c) If liability upon the bond thus filed by the distributor with the Department of Transportation shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Department any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the distributor. If the new bond is furnished by the distributor as above provided, the Department shall cancel and surrender the bond of the distributor for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.
- (d) If the Department of Transportation, after a hearing of which the distributor shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the Department file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The total amount of any such additional bond, as well as the bond required under subsection (a) of this section, shall not exceed the maximum of \$200,000, and the Department shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided.

(e) Any surety on any bond furnished by any distributor as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall therein inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge. Simultaneously, the Department shall also notify the distributor who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a date certain. The distributor shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the distributor.

(30 Del. C. 1953, § 5107; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 4; 64 Del. Laws, c. 365, § 1; 65 Del. Laws, c. 339, § 1; 66 Del. Laws, c. 97, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 311, §§ 1, 2.)

#### **§ 5108. Revocation, cancellation and surrender of license and bond.**

The Department of Transportation may revoke the license of any distributor for reasonable cause. Before revoking any such license the Department shall notify the distributor to show cause within 60 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to or pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license.

The Department shall cancel any license to act as a distributor immediately upon surrender thereof by the holder. If the license of any distributor shall be cancelled by the Department and if the distributor shall have paid to the State of Delaware all taxes, penalties and interest due and payable by it under the gasoline laws of this State, then the Department shall cancel and surrender the bond or other surety theretofore filed by said distributor. The Department shall promptly notify all licensed distributors of any such cancellation.

The Department of Transportation may suspend or revoke a gasoline retailer's license for reasonable cause in the same manner as a distributor's license.

(30 Del. C. 1953, § 5108; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 5; 68 Del. Laws, c. 290, § 184.)

#### **§ 5109. Records of Department of Transportation.**

The Department of Transportation shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.

(30 Del. C. 1953, § 5109; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

#### **§ 5110. Levy and rate of tax; collection.**

(a) There is hereby levied and imposed for the state fiscal year commencing August 1, 1981, a tax of 11 cents per gallon on all gasoline which is sold or used in the State. For each state fiscal year thereafter, the rate of such tax per gallon shall equal the product of: Ten percent and the 12-month average of the "wholesale average price" per gallon of regular unleaded gasoline at self-service stations in the Philadelphia, Pennsylvania area, as reported in the McGraw-Hill Platt's/Lundberg Report (or successor report), such product to be rounded to the nearest whole cent. A calculation producing a rate including a fraction less than one half of 1 cent shall be rounded down to the nearest whole cent, and a calculation producing a rate including a fraction equal to or greater than one-half cent shall be rounded up to the nearest whole cent. The



rate of taxation for the fiscal years beginning July 1, 1982, and thereafter shall be calculated on the basis of such wholesale average prices reported for the consecutive 12-month period commencing March 1 and ending on the last day of February of the fiscal year next prior to the fiscal year in which the tax will be imposed. The Secretary of Transportation and the Secretary of Finance shall compute the applicable rate in March, or as soon as practicable thereafter, for the next state fiscal year and shall notify the Governor and the General Assembly of their findings and calculations not later than April 30 of that year. If the Platt's/Lundberg Report fails to contain reports on the wholesale average price per gallon of regular unleaded gasoline at self-service stations in the Philadelphia, Pennsylvania area for any month or if the report is discontinued and no successor report is published, the Secretary of Transportation and the Secretary of Finance shall use available figures reflecting such prices reported in any other nationally recognized publication. Notwithstanding the foregoing:

- (1) The tax rate per gallon of gasoline levied pursuant to this section shall not be less than an amount equivalent to 11 cents per gallon;
  - (2) The tax rate for any fiscal year commencing July 1, 1982, and thereafter shall not be less than the rate for the prior state fiscal year nor more than 1 cent per gallon above the tax rate in effect for the prior state fiscal year; and
  - (3) The maximum aggregate tax rate shall not exceed an amount equivalent to 11 cents per gallon of gasoline.
- (b) The tax shall be collected by and paid to the State but once in respect to any gasoline. Nothing in this section shall be construed to exempt from the tax any distributor of gasoline with respect to gasoline used in making such distribution. The tax shall be collected in the manner hereinafter provided.
- (c) Notwithstanding subsection (a) of this section, the tax levied and imposed in subsection (a) of this section shall be 22 cents per gallon through December 31, 1994. Thereafter, the tax shall be 23 cents per gallon. Effective January 1, 1995, the tax shall be no more or no less than 23 cents per gallon until increased or decreased by the State. By virtue of the pledge and assignment of motor fuel tax revenues by the State to the Delaware Transportation Authority, said tax shall not be decreased during the period any bonds of that Authority are outstanding and unpaid.

(30 Del. C. 1953, § 5110; 54 Del. Laws, c. 107; 55 Del. Laws, c. 112, § 1; 58 Del. Laws, c. 289, § 1; 59 Del. Laws, c. 218, §§ 1, 2; 59 Del. Laws, c. 416, § 1; 61 Del. Laws, c. 74, § 1; 63 Del. Laws, c. 179, § 24; 65 Del. Laws, c. 385, § 10; 66 Del. Laws, c. 87, § 2; 67 Del. Laws, c. 285, § 55; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, §§ 49, 50.)

#### **§ 5111. Exempt sales of gasoline.**

- (a) The tax imposed by this chapter shall not apply to gasoline:
- (1) Sold and delivered to and used by the United States or any of the governmental agencies thereof;
  - (2) Sold or delivered under the protection of the interstate commerce clause of the Constitution of the United States;
  - (3) Sold by a distributor to another distributor;
  - (4) Sold and delivered to and used by the State and every political subdivision thereof;
  - (5) Sold and delivered to and used by volunteer fire companies in any of their official vehicles and veteran or civic organizations in their ambulances when such vehicles are used on a voluntary, nonprofit basis. The fuel supply tanks maintained under this section must be for the exclusive use of said vehicles.



- (b) The Department of Transportation may, for purposes of identification of the above agencies or organizations, require that an exemption certificate issued by the Department of Transportation be on file with the Department and the supplier from which the fuel is purchased.

(30 Del. C. 1953, § 5111; 54 Del. Laws, c. 107; 56 Del. Laws, c. 33, § 2; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 81, § 1; 62 Del. Laws, c. 380, § 6; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 65.)

**§ 5112. Distributor's taxable sales of gasoline; what is included.**

The distributor's taxable sales shall, for the purpose of this chapter, include all gasoline delivered to retail dealers, including gasoline delivered to retail outlets on consignment or to retail outlets owned or operated by the distributor.

(30 Del. C. 1953, § 5112; 54 Del. Laws, c. 107.)

**§ 5113. Monthly reports of distributors.**

- (a) On or before the 25th day of each calendar month, each distributor of gasoline shall file with the office of the Department of Transportation, a statement on a form prepared by the Department of Transportation, which shall show the quantity of gasoline on hand on the first and last days of the preceding calendar month, the quantity of gasoline received, produced, manufactured, refined or compounded during the preceding calendar month, the quantity of gasoline sold, delivered or used within this State during the preceding calendar month, and such other information as the Department of Transportation may require. Aviation gasoline shall be reported separately from other gasolines.
- (b) On or before the 25th day of June each year, distributors having average monthly taxable sales and/or use of 500,000 or more gallons shall file a statement of the estimated sales and/or use anticipated for the same calendar month.
- (c) The fact that a distributor's name is signed to such statements shall be prima facie evidence for all purposes that the reports were actually signed by such distributor or a duly authorized agent. Such statements shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification.
- (d) The monthly statements or payments of tax, as provided in § 5114 of this title, shall be considered to have been duly and timely filed if such statements or payments are deposited in the United States mail with postage prepaid on or before the 25th day of a given calendar month; provided, however, that for good cause the Department of Transportation may grant a licensee a reasonable extension of time.  
In lieu of depositing tax payments in the United States mail, a licensed motor fuel distributor may hand deliver said payment to the Department of Transportation or the Department may require licensed motor fuel distributors to make electronic transfers of such funds to the appropriate state account.
- (e) When the 25th day of a given month falls on a weekend or state holiday, the due date of the statement and tax shall be the next following business day of the State.

(30 Del. C. 1953, § 5113; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 1; 60 Del. Laws, c. 440, §§ 1-3; 62 Del. Laws, c. 380, § 7; 67 Del. Laws, c. 340, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 12.)

**§ 5114. Payment of tax by distributor.**

- (a) At the time of rendering the statement required by § 5113(a) of this title, the distributor shall pay to the Department of Transportation the tax or taxes levied by this chapter on all gasoline sold and/or used within this State during the preceding calendar month.
- (b) Distributors averaging monthly sales and/or use of 500,000 or more gallons over a 12-month period ending April 30 each year shall, when complying with § 5113(b) of this title, pay to the Department of Transportation in June each year the tax or taxes on 75% of the gallons of gasoline estimated to be sold and/or used during said month of June. The balance of the tax due on the actual sales and/or use in June shall be paid on or before the 25th day of the next calendar month.

(30 Del. C. 1953, § 5114; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 2; 60 Del. Laws, c. 667, § 1; 62 Del. Laws, c. 380, § 8; 68 Del. Laws, c. 290, § 184.)

**§ 5115. Penalties for failure to file reports or pay tax when due.**

When any distributor fails to file monthly reports with the Department of Transportation as required by § 5113 of this title or when such distributor fails to pay the Department the amount of taxes due to this State as required by § 5114 of this title, a penalty of \$5.75 per business day shall accrue up to a maximum of \$28.75 for each report. For each report filed more than 5 business days late, the penalty shall be \$28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; however, the Department may waive all or any part of the penalty and interest when it is established to the satisfaction of the Department that failure to file the monthly report or pay the tax by the 25th day of the month was not with intent to violate the law.

A month, for purposes of calculating interest in this chapter, shall be from the 26th day of a given month through the 25th day of the following month.

(30 Del. C. 1953, § 5115; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 3; 60 Del. Laws, c. 422, § 1; 62 Del. Laws, c. 380, §§ 9, 10; 64 Del. Laws, c. 368, § 3; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. laws, c. 186, § 1.)

**§ 5116. Estimate by Department of Transportation in absence of tax report; redetermination of assessment.**

- (a) Whenever any distributor neglects or refuses to make and file any report for any calendar month as required by this chapter or files an incorrect or fraudulent report, the Department of Transportation shall determine, from any information obtainable in its office, or elsewhere, the number of gallons of gasoline with respect to which the distributor has incurred liability under the gasoline laws of this State.
- (b) In any action or proceeding for the collection of the gasoline tax and/or penalties or interest imposed in connection therewith, an assessment by the Department of the amount of the tax due and/or interest or penalties due to the State shall constitute prima facie evidence of the claim of the State, and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law.
- (c) Promptly after the date of such determination, the Department of Transportation shall notify by mail the person against whom the assessment is made. Within 60 days after the date of notification, such person may file with the Department of Transportation a petition for redetermination of such assessment. Every petition for redetermination shall state specifically the reason(s) which the petitioner believes entitles the petitioner to such redetermination. It shall be the duty of the Secretary of Transportation within 90 days after the receipt of any petition to dispose of such petition for redetermination. Notice of the decision shall be given in writing to the petitioner promptly by the Secretary of Transportation.

(d) Any person shall have the right to appeal within 60 days the decision of the Secretary of Transportation concerning redetermination to the Superior Court of this State.

(30 Del. C. 1953, § 5116; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 11; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

**§ 5117. Collection by Department of Transportation of delinquent taxes.**

If any distributor shall be in default for more than 10 days in payment of any taxes and/or penalties thereon payable under the terms of this chapter, the Department of Transportation may issue a warrant under its official seal, and signed by its Chairperson, directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such distributor, without exemption, found within the sheriff's jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time to be therein specified, which shall not be less than 20 nor more than 60 days from the date of the warrant. The sheriff, to whom any such warrant is directed, shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against the goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for services in executing the warrant, to be collected in the same manner; provided, that nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes by an action upon any bond that may be filed with the Department of Transportation under the provisions of this chapter, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

(30 Del. C. 1953, § 5117; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 12; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

**§ 5118. Rules and regulations.**

The Department of Transportation may prescribe reasonable rules and regulations for the carrying out of this chapter and all forms of reports required by this chapter.

(30 Del. C. 1953, § 5118; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

**§ 5119. Deposit of receipts by Department of Transportation.**

All money received by the Department of Transportation under this chapter shall be deposited, not later than the close of the business day next following such receipt, to the credit of the Delaware Transportation Authority pursuant to Chapter 13 of Title 2, as amended, and any resolution or indenture of the Delaware Transportation Authority, authorizing the issuance of bonds to finance the costs of transportation facilities described in said title, is to be used to finance the costs of roads, highways and other transportation facilities and not to defray the expenses and obligations of the general government of the State.

(30 Del. C. 1953, § 5119; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 63 Del. Laws, c. 179, § 25; 68 Del. Laws, c. 290, § 184.)

**§ 5120. Refunds of motor fuel taxes.**

- (a) The Secretary of Transportation shall refund out of the General Fund of this State the tax paid on gasoline upon receipt of written authorization from the Department of Transportation so to do, which written authorization shall be given under the following conditions:
- (1) Gasoline used by any person for the purpose of operating stationary gas engines, tractors, motorboats, airplanes or aircrafts, or any other purpose except in motor vehicles licensed, or subject to being licensed, for operation upon any of the public highways of the State.
  - (2) [Repealed.]
  - (3) Gasoline sold and delivered to, and used and consumed by, the operators of taxicab businesses in the operation of a taxicab or taxicabs in the normal course of such businesses; provided, however, that the main base of operations of the taxicab business in each case must be in the State, and the application provided for in subsection (b) of this section must certify that all fees and taxes then due from such business to the State or to any local government of the State by the operator and/or owner of such taxicab business shall have been paid in full. For purposes of this paragraph, the definition of "taxicab" shall be as set forth in § 101 of Title 21.
- (b) Such application shall be in such form as shall be prescribed by the Department, shall be under the penalties of perjury, and shall state the quantity of gasoline with respect to which refund is claimed, the purpose for which said gasoline was used, date of purchase, from whom purchased, and such other information as the Department shall require.
- (c) Such application shall be accompanied by the original invoice showing such purchase, together with evidence of the payment thereof.
- (d) All applications for refunds must be filed with the Department of Transportation within 12 calendar months from the date of the purchase or invoice of the gasoline with respect to which a tax refund is claimed.
- (e) The conditions of this section having been fully complied with, the Department of Transportation shall determine the amount of the refund due on such application and authorize the Secretary of Transportation in writing to pay such amount within 30 days from the time of filing of the application for refund.
- (f) There shall be refunded out of the General Fund of this State any tax, penalty or interest erroneously or illegally collected under this chapter. A refund claim prepared in such manner as the Department may prescribe shall be filed with the Department within 1 year from the earlier of: (1) The date of the payment; or (2) the date the payment was required to be made. The Department shall certify the amount thereof to the State Treasurer who shall thereupon draw a warrant to the claimant forthwith.
- (g) If a refund granted under this section shall later be determined to have been erroneously or illegally paid in whole or in part, the Department of Transportation may demand, within 3 years from the date of such payment, that restitution be made to the General Fund of this State. Interest on said moneys assessed shall accrue at the rate of 1% per month, or fraction thereof, from the date of notification by the Department of Transportation until receipt of payment.

(30 Del. C. 1953, § 5120; 54 Del. Laws, c. 107; 56 Del. Laws, c. 33, § 1; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, §§ 2, 3; 60 Del. Laws, c. 81, § 2; 60 Del. Laws, c. 642, § 1; 62 Del. Laws, c. 380, §§ 13, 14; 68 Del. Laws, c. 156, § 55(b); 68 Del. Laws, c. 290, § 184.)

**§ 5121. Reports from carriers transporting gasoline; penalty for failure to file report; appeal.**

- (a) Every railroad company, suburban or interurban railroad company, pipeline company, water transportation company and common carrier transporting gasoline, either in interstate or in intrastate commerce, to points within this State, and every person, except distributors, transporting gasoline by whatever manner to a point in this State from any point outside this State shall report, under penalty of perjury, to the Department of Transportation on forms prescribed by the Department all deliveries of gasoline so made to points within this State.
- (b) The reports shall cover monthly periods, shall be postmarked by the United States Postal Service on or before the 25th day of the calendar month immediately following the month covered by the report, shall show the name and address of the person to whom the deliveries of gasoline have actually and in fact been made, and such other additional information relative to shipments of gasoline as the Department may require.
- (c) If any carrier fails to file a report as required by this section, a penalty of \$5 per business day shall accrue until said report is filed up to a maximum amount of \$25 for each report; however, the Department may waive all or part of the penalty if it is established to the satisfaction of the Department that failure to file the report was not with intent to violate the law.

(30 Del. C. 1953, § 5121; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, §§ 15, 16; 68 Del. Laws, c. 290, § 184.)

**§ 5122. Retention of records by distributors or retailers; penalties.**

- (a) Each distributor or retailer shall maintain and keep, for a period of 3 years, such records of gasoline received, used, sold and/or delivered within this State by such distributor or retailer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Department of Transportation for the reasonable administration of this chapter.
- (b) Whoever violates this section shall be fined not more than \$1,000 and the costs of prosecution, or imprisoned not more than 1 year, or both.

(30 Del. C. 1953, § 5122; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 58 Del. Laws, c. 203, § 1; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 17; 68 Del. Laws, c. 290, § 184.)

**§ 5123. Inspection of records.**

- (a) The record of all purchases, receipts, sales, distribution and use of gasoline of every distributor or retailer shall at all times during the business hours of the day be subject to inspection by the Department of Transportation or by any agent or employee duly authorized by it.
- (b) The Department shall make an inspection of the records of all purchases, receipts, sales, distribution and use of gasoline of every distributor or retailer to the extent deemed necessary by the Secretary, by or through such agent or employee as may be duly authorized by it, for the purpose of ascertaining whether the distributors or retailers are complying with this chapter. If it is found that the distributors or retailers are not complying with this chapter, the Department shall report to the Attorney General in what respects the distributors or retailers are failing to so comply with this chapter.

(30 Del. C. 1953, § 5123; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 58 Del. Laws, c. 203, § 2; 59 Del. Laws, c. 216, §§ 2, 3; 62 Del. Laws, c. 380, § 18; 68 Del. Laws, c. 290, § 184.)

**§ 5124. Discontinuance, sale or transfer of business by distributor or retailer; penalties.**

- (a) Whenever a person ceases to engage in business as a distributor or retailer within this State by reason of the discontinuance sale or transfer of the business of such distributor or retailer, the distributor or retailer shall notify the Department of Transportation in writing at least 10 days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties and interest under this chapter not yet due and payable under the provisions of this chapter shall, notwithstanding such provisions, become due and payable concurrently with the discontinuance, sale or transfer, and the distributor or retailer shall concurrently with such discontinuance, sale or transfer make a report and pay all such taxes, interest and penalties, and surrender to the Department the license theretofore issued to the distributor or retailer by the Department.
- (b) Unless the notice provided for in subsection (a) of this section shall have been given to the Department of Transportation, the purchaser or transferee shall be liable to this State for the amount of all taxes, penalties and interest under this chapter, accrued against any such distributor or retailer so selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor or retailer.
- (c) Whoever violates this section shall be fined not less than \$50 nor more than \$300 and the costs of the prosecution, or imprisoned not more than 1 year, or both.

(30 Del. C. 1953, § 5124; 54 Del. Laws c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 19; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

**§ 5125. Delivery from tank truck to motor vehicle; penalty.**

The delivery of gasoline from a tank truck to the gasoline tank of a motor vehicle is prohibited except in cases of emergency. Whoever violates this section shall be fined not more than \$50, or imprisoned not more than 30 days, or both.

(30 Del. C. 1953, § 5125; 54 Del. Laws, c. 107.)

**§ 5126. Exchange of information among the states.**

The Department of Transportation shall, upon request duly received from the officials to whom are entrusted the enforcement of the gasoline tax laws of any other state or the federal government, forward to such officials any information which it may have in its possession relative to the manufacture, receipt, sale, use, transportation and/or shipment by any person of gasoline.

(30 Del. C. 1953, § 5126; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

**§ 5127. Reports of Department to distributors.**

Repealed by 59 Del. Laws, c. 535, § 1, eff. July 26, 1974.

**§ 5128. Penalties.**

- (a) Whoever violates any provision of this chapter, a penalty for which is not otherwise provided, or fails or refuses to pay the tax imposed by this chapter, or engages in business in this State as a distributor or retailer without being the holder of an uncanceled license to engage in such business, or makes any false statement in any application, report or statement required by this chapter, or refuses to permit the Department of Transportation or any deputy to examine records as provided by this chapter, or fails to keep proper records of quantities of gasoline received, produced, refined, manufactured, compounded, sold, used and/or



delivered in this State as required by this chapter, or collects or causes to be repaid to any person any tax not being entitled to the same under the provisions of this chapter shall, for the first offense, be fined not more than \$500, or imprisoned not more than 6 months, or both, and for a second and any subsequent offense shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. In addition to the penalty imposed in conformity to the above, the defendant shall be required to pay all taxes and penalties due the State under this chapter and/or pay to the State any other moneys wrongfully withheld or illegally refunded. Each day or part thereof during which any person shall engage in business as a distributor or retailer without being the holder of an uncanceled license shall constitute a separate offense within the meaning of this section.

(b) Whoever refuses or neglects to make any statement, report or return required by this chapter, or knowingly makes, or aids or assists any other person in making a false statement in a report to the Department of Transportation or in connection with an application for refund of any tax, or sells any gasoline purchased by such person from any person other than a duly licensed distributor upon which the tax herein imposed shall not be paid shall, when no other penalty of fine and/or imprisonment is imposed by this chapter, be fined not less than \$100 nor more than \$1,000, or imprisoned not less than 30 days nor more than 1 year, or both. The Superior Court of this State shall have exclusive jurisdiction over violations of this chapter.

(c) The Delaware State Police are authorized and directed to assist in the enforcement of this section.

(30 Del. C. 1953, § 5128; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, §§ 20, 21; 68 Del. Laws, c. 290, § 184.)

**§ 5129. Collection of bad checks; service charge; interest.**

If a check received in payment of moneys due the Department under this chapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of \$10 and interest at the rate of 1% per month, or fraction thereof, shall accrue on the tax, if any, from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 15 days of the original amount of the check plus the added service charge, interest, if any, and the cost of the postage incurred in mailing the statement. Failure of the maker to respond to the demand within 15 days shall constitute cause for the Department to suspend the maker's motor fuel license and 30 days thereafter, to revoke the maker's motor fuel license.

(62 Del. Laws, c. 380, § 22.)



## Subchapter II. Special Fuel

### **§ 5131. Definitions.**

As used in this chapter:

- (1) "Person" includes every natural person, fiduciary, association or corporation. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to an association, means and includes the partners or members thereof, and, as applied to corporations, the officers thereof.
  - (2) "Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction.
  - (3) "Motor vehicle" means any vehicle propelled by an internal combustion engine and licensed or subject to be licensed for operation upon the highways.
  - (4) "Special fuel" means and includes all combustible gasses and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include gasoline as defined in § 5101 of this title and except that it does not include combustible gases and liquids used prior to January 1, 1996, in a program to determine commercial feasibility of alternatively fueled vehicles.
  - (5) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person.
  - (6) "Special fuel user" means the owner or other person responsible for the operation of a motor vehicle at the time special fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this State.
  - (7) "Use" means the receipt, delivery or placing of special fuel by a special fuel user into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this State.
  - (8) "Special fuel supplier" means any person in the business of handling or selling special fuel who delivers or places such fuel into a bulk supply tank or tanks of a special fuel user or special fuel dealer.
  - (9) "Special fuel tax exemption marker" means a marker or sticker supplied by the Department to be affixed to a special fuel bulk storage tank, or to the pump attached thereto, to certify that tax-free fuel may be placed into such tank.
  - (10) "Department" means the Department of Transportation.
  - (11) "A program to demonstrate commercial feasibility of alternatively fueled vehicles" means testing programs, pilot programs, demonstration programs and other programs in which data is being collected on fuel economy, performance and air emissions of vehicles primarily propelled by fuels other than gasoline, reformulated gasoline, diesel fuel, reformulated diesel fuel, fuel oil or kerosene and, for any taxpayer, the number of vehicles involved in such programs does not exceed the greater of 10 vehicles or 10 percent of the taxpayer's vehicles propelled primarily by a fuel subject to tax under this chapter.
  - (12) "Dyed Diesel fuel" means any diesel fuel dyed pursuant to federal regulations cited in 26 CFR 48.4082-1, as amended from time to time.
- (30 Del. C. 1953, § 5131; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24D; 61 Del. Laws, c. 141, § 1; 65 Del. Laws, c. 297, §§ 4-7; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 171, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 459, § 1.)

### **§ 5132. Tax imposed.**

- (a) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the sale or delivery of special fuel to any special fuel dealer or special fuel user not the holder of a valid special fuel dealer's or special fuel user's license. Said tax, with respect to all special fuel delivered by a special fuel supplier into the bulk storage tank or tanks of said dealer or user, shall attach at the time of such delivery and shall be collected by the supplier from the dealer or user and shall be paid over to the Department of Transportation as hereinafter provided.
- (b) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the use (within the meaning of the word "use" as defined in § 5131 of this title) of special fuel when such special fuel is delivered into the supply tanks of motor vehicles in this State by a licensed special fuel dealer or a licensed special fuel user. Said tax, with respect to all special fuel delivered by a licensed special fuel dealer into supply tanks of motor vehicles in this State, shall attach at the time of such delivery and shall be collected by such dealer from the special fuel user and shall be paid over to the Department of Transportation as hereinafter provided. Said tax, with respect to special fuel acquired by any licensed special fuel user in any manner other than by delivery by a special fuel dealer into the supply tank of a motor vehicle, shall attach at the time of the use (as defined in § 5131 of this title) of such fuel and shall be paid over to the Department of Transportation by said user as herein provided.

(30 Del. C. 1953, § 5132; 54 Del. Laws, c. 107; 55 Del. Laws, c. 112, § 2; 57 Del. Laws, c. 741, § 24B; 58 Del. Laws, c. 289, § 2; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 14, § 1; 60 Del. Laws, c. 423, § 1; 61 Del. Laws, c. 74, § 2; 61 Del. Laws, c. 141, § 2; 63 Del. Laws, c. 179, § 26; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, §§ 52-55.)

### **§ 5133. Exemptions.**

- (a) The tax imposed by this chapter shall not apply to special fuel sold and delivered to and used by the following persons:
- (1) The United States or any governmental agencies thereof;
  - (2) The State and every political subdivision thereof;
  - (3) Volunteer fire companies in any of their official vehicles and veterans' or civic organizations in their ambulances when such ambulances are provided on a voluntary basis.
- (b) The Department may, for purposes of identification, require that the above persons apply to the Department for a special fuel tax exemption marker to be affixed to the applicable bulk supply tank or pump thereof. The tax exemption marker may be revoked by the Department for just cause.

(30 Del. C. 1953, § 5133; 54 Del. Laws, c. 107; 61 Del. Laws, c. 141, § 3; 65 Del. Laws, c. 297, §§ 8, 9; 69 Del. Laws, c. 77, § 66.)

### **§ 5134. Special fuel license; bond.**

- (a) Required. It shall be unlawful for any person to act as a special fuel dealer in this State unless such person is the holder of a valid special fuel dealer's license issued by the Department. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this State, the use (as defined in this subchapter) of special fuel in this State by any person shall be unlawful unless such person is the holder of a valid special fuel user's license issued by the Department. However, the requirement for a special fuel dealer's or special fuel user's license and bond may be waived by the Department, if said dealer or user has contracted to pay the applicable special fuel tax to a licensed special fuel supplier at the time of purchase. Also, it shall be unlawful for a special fuel supplier to collect the special fuel tax from a special fuel dealer or special fuel user unless the supplier is the holder of a valid special fuel supplier's license. A

fee of \$10 shall be paid to the Department for the issuance of each special fuel license. As a condition of their license, persons shall make the required loan payments on their own account or for their retailer customers who:

(1) Participate in the Small Retail Gasoline Station Assistance Loan Fund, established in Chapter 74 of Title 7; and

(2) Provide these funds to the person.

(b) Application. Application for a special fuel license shall be made to the Department of Transportation on forms supplied by the Department. A license shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle by a special fuel dealer or special fuel user.

(c) Form of application. The application shall be filed upon a form prepared and furnished by the Department. The application shall contain such information as the Department deems necessary.

(d) Bond.

(1) No special fuel license shall be issued to any person or continued in force unless such person has furnished a surety bond in such forms and amount as the Department may require, but not less than \$5,000, nor more than \$200,000, to secure compliance with this chapter, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the license is revoked for cause, or otherwise cancelled or surrendered.

(2) The bond shall be in such form as may be approved by the Department of Transportation, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such licensee to the Department of any and all special fuel taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(3) If liability upon the bond thus filed by the licensee with the Department shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or, if in the opinion of the Department, any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the licensee. If the new bond is furnished by the licensee as above provided, the Department shall cancel and surrender the bond of the licensee for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.

(4) If the Department of Transportation, after a hearing of which the licensee shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the licensee is or may at any time become liable, then the licensee shall forthwith upon the written demand of the Department file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The total amount of any such additional bond as well as the bond required under paragraph (1) of this subsection shall not exceed the maximum of \$200,000, and the Department shall forthwith cancel the license certificate of any licensee failing to file an additional bond as herein provided.

(5) Any surety on any bond furnished by any licensee as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall thereafter inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request

for release and discharge. Simultaneously, the Department shall also notify the licensee who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a certain date. The licensee shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the licensee.

- (e) Issuance. Upon receipt of the application and bond in proper form, the Department of Transportation shall issue to the applicant a license to act as a special fuel dealer or a special fuel user or a special fuel supplier; provided, however, that the Department may refuse to issue a license to any person: (1) Who formerly held any type of license, which, prior to the time of filing application, has been revoked for cause; or (2) who is a subterfuge for the real party in interest whose license, prior to the time of filing application, has been revoked for cause; or (3) upon other sufficient cause being shown. Before such refusal, the Department shall grant the applicant a hearing and shall grant the applicant at least 30 days' written notice of the time and place thereof.
  - (f) Term of license. Each special fuel license shall expire on the 30th day of June. Every person desiring to continue as a special fuel dealer or as a special fuel user or as a special fuel supplier shall annually thereafter on the 1st day of July procure from the Department such a license, which shall expire on the 30th day of June next following.
  - (g) Assignment forbidden. No special fuel dealer's license or special fuel user's license or special fuel supplier's license shall be transferable.
  - (h) Revocation, cancellation and surrender of license and bond. The Department of Transportation may revoke the license of any special fuel dealer or special fuel user or special fuel supplier for reasonable cause. Before revoking any such license the Department shall notify the licensee to show cause within 30 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to and pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license.
- The Department shall cancel any license to act as a special fuel dealer or a special fuel user or special fuel supplier immediately upon surrender thereof by the holder.

(30 Del. C. 1953, § 5134; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 141, §§ 4-9; 64 Del. Laws, c. 365, §§ 2, 6; 64 Del. Laws, c. 368, § 4; 65 Del. Laws, c. 297, § 10; 65 Del. Laws, c. 339, § 2; 66 Del. Laws, c. 97, § 2; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 75; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 311, §§ 3, 4.)

#### **§ 5135. Records.**

- (a) Preparation of records. For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle by a licensed special fuel dealer or a licensed special fuel user, said dealer or user making such delivery shall prepare and maintain such records as the Department of Transportation may reasonably require with respect to all such deliveries, and with respect to inventories, receipts, purchases, use and sales or other dispositions of special fuel. Also, each licensed special fuel supplier shall prepare and maintain such records as the Department of Transportation shall reasonably require with respect to all sales and/or deliveries of special fuel to customers.
- (b) Retention of records. The records required under this section shall be retained for a minimum of 3 years and shall be available, at all reasonable times, for examination by representatives of the Department.

(30 Del. C. 1953, § 5135; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 477, § 1; 61 Del. Laws, c. 141, § 10; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

**§ 5136. Monthly reports and payments.**

(a) Reports. For the purpose of determining the amount of liability for the tax herein imposed, each licensee shall file with the Department of Transportation, on forms prescribed by the Department, a monthly tax report. Such report shall contain a declaration by the person making same to the effect that the statements contained therein are true and are made under penalties of perjury which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the Department may reasonably require for the proper administration and enforcement of this chapter. A licensed special fuel dealer or a licensed special fuel user shall file a report for each location at which special fuel is delivered or placed by said dealer or user into a fuel supply tank of a motor vehicle; provided, however, that if said dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly report to the Department covering such location need not include inventory control data covering bulk storage from which wholesale distribution is made. A licensed special fuel supplier shall file 1 report regardless of the number of locations at which the supplier's special fuel is stored or handled.

(b) Due date. The special fuel licensee shall file the report on or before the 25th day of the next succeeding calendar month following the monthly period to which it relates. When the 25th day of the month falls on a weekend or state holiday, the due date of the report shall be the next following business day of the State. Such report and payment shall be considered to have been duly and timely filed if such report or payment is postmarked by the United States Postal Service on or before the due date; provided, however, that for good cause the Secretary of the Department of Transportation may grant a licensee a reasonable extension of time.

In lieu of depositing tax payments in the United States mail, a licensed special fuel dealer, user or supplier may hand deliver said payment to the Department of Transportation or the Department may require licensed special fuel dealers, users or suppliers to make electronic transfers of such funds to the appropriate state account.

(c) Tax computation. The tax imposed by this subchapter shall be computed by each special fuel dealer or special fuel user by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed by the special fuel dealer or special fuel user into the supply tank or tanks of a motor vehicle; provided, however, that if a special fuel dealer or special fuel user has contracted with a licensed special fuel supplier to have the tax included in the price of the fuel, then the tax shall be computed by the supplier by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed into the bulk storage tank or tanks of the dealer or user.

(d) Payments. The monthly tax report shall be accompanied by remittance covering the tax due hereunder on special fuel as computed in subsection (c) of this section.

If a check received in payment of moneys due the Department under this subchapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of \$10, and interest at the rate of 1 percent per month, or fraction thereof, shall accrue on the tax from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 10 days of the original amount of the check plus the added service charge, penalty and interest, if any, and the cost of the postage incurred in mailing the statement, such amounts to be set forth in the statement. Failure of the maker to respond to the demand within 10 days shall constitute cause for the Department to suspend the maker's special fuel license, and 30 days after such suspension, if restitution has not been received, to revoke the maker's special fuel license.



- (e) Refusal or failure to file report when due. In case any special fuel licensee refuses or fails to file a report required by this chapter within the time prescribed by subsection (b) of this section, there is hereby imposed a penalty of \$5.75 per business day of this State up to a maximum of \$28.75 for each such report. For each report filed more than 5 business days late, the penalty shall be \$28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; provided, however, that if any such licensee shall establish by a fair preponderance of evidence that the failure to file a report within the time prescribed was due to reasonable cause and was not with intent to violate the law, the Department may waive all or any part of the penalty provided by this subsection.
- (f) Failure to pay tax. When a licensee files a report but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of 1% per month, or fraction thereof, from the date such tax was due to the date of payment in full thereof.
- (g) Deficiency. If it be determined by the Department of Transportation that the tax reported by any licensee is deficient, the Department shall proceed to assess the deficiency on the basis of information available to the Department and there shall be added to this deficiency interest at the rate of 1% per month, or fraction thereof, from the date such tax was due to the date of payment in full thereof.
- (h) Determination if no report is made. If any person liable for a report under the requirements of this chapter as a special fuel dealer, special fuel user or special fuel supplier, whether or not the person is licensed as such, fails, neglects, or refuses to file a special fuel tax report when due, the Department of Transportation shall, on the basis of information available to it, determine the tax liability of that person for the period during which no report was filed, and to the tax as thus determined the Department shall add the penalty and interest provided in subsection (e) of this section. An assessment made by the Department pursuant to this subsection or to subsection (g) of this section shall be presumed to be correct and in any instance when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive as the case may be.
- (i) Fraudulent report. If any licensee shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the Department a penalty equal to 25% of the deficiency together with interest at 1% per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment thereof in addition to all other penalties prescribed by law.
- (j) Limitation. Except in the case of a false or fraudulent report, or of neglect, failure or refusal to make a report, every deficiency shall be assessed under subsection (g) of this section within 3 years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the report is filed, whichever period expires the later.
- (k) Notification; redetermination; appeal. Promptly after determination of the amount of moneys due to the State under this subchapter for whatever reason, the Secretary of Transportation shall notify by mail the person against whom the assessment is made. Within 60 days of the date upon which any such determination was mailed, such person may file with the Secretary of Transportation a petition for redetermination of the assessment. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitles the petitioner to such redetermination. It shall be the duty of the Secretary to dispose of a petition for redetermination within 90 days of the Secretary's receipt of it. The petitioner shall be promptly notified by the Secretary of the Secretary's decision. Within 60 days after the date of the Secretary's decision, the petitioner may appeal such decision to the Superior Court of this State.

- (l) Collection of delinquent taxes. If any special fuel dealer, special fuel user or special fuel supplier shall, for a period in excess of 10 days, be in default of payment of any taxes, penalties and/or interest thereon, which are payable under the terms of this subchapter, the Department of Transportation may issue a warrant under its official seal, signed by its Secretary, and directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such debtor, without exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time specified in the warrant which shall be not less than 20 or more than 60 days from the date the warrant was issued. The sheriff to whom any such warrant is directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and the sheriff shall be entitled to the same fees for services in executing the warrant to be collected in the same manner. The foregoing notwithstanding, nothing in this subsection shall be construed as forfeiting or waiving any rights of the Department or of this State to collect such taxes by an action upon any bond that may be filed with the Department under any provision of this subchapter where by suit or otherwise; and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

(30 Del. C. 1953, § 5136; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 191, §§ 1, 2; 60 Del. Laws, c. 423, §§ 2, 3; 60 Del. Laws, c. 440, §§ 4-6; 61 Del. Laws, c. 141, § 11; 64 Del. Laws, c. 368, §§ 5, 6; 65 Del. Laws, c. 297, §§ 11-13; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 340, § 2; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

#### **§ 5137. Refund of taxes erroneously or illegally collected.**

In the event that any taxes, penalties or interest imposed by this law have been erroneously or illegally collected from a licensee, the Department of Transportation may permit such licensee to take credit against a subsequent tax report for the amount of the erroneous or illegal overpayment, or shall certify the amount thereof to the Secretary of Transportation who shall thereupon draw a warrant for such certified amount to such licensee. Such refund shall be paid to the licensee forthwith.

No refund of any taxes, fees, penalties or interest imposed under this chapter may be obtained except by filing a written claim with the Department before the expiration of 1 year from the earlier of: (1) The date of the payment; or (2) the date the payment was required to be made. The claim must be in such form as may be prescribed by the Department, and shall specifically set forth the circumstances entitling the claimant to the refund.

(30 Del. C. 1953, § 5137; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, §§ 2, 3; 61 Del. Laws, c. 141, § 12; 65 Del. Laws, c. 297, § 14; 68 Del. Laws, c. 156, § 55(c); 68 Del. Laws, c. 290, § 184.)

#### **§ 5138. Administration.**

- (a) Rules and regulations. The Department of Transportation shall enforce this chapter, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.
- (b) Examination of records. The Department of Transportation may examine the records of special fuel dealers, special fuel users, special fuel suppliers and other sellers of distillate fuels and make such other investigations as it may deem necessary in the administration and enforcement of this chapter.



- (c) **Presumption.** For the purpose of enforcing this chapter, it shall be prima facie presumed that all special fuel received by any person into storage having dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by that person into the fuel supply tanks of motor vehicles.
- (d) **Reciprocal exchange of data.** The Department of Transportation shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user; provided such other state or states furnish like information to this State.
- (e) **Records open to public.** Reports required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.
- (30 Del. C. 1953, § 5138; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 23E; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 141, §§ 13, 14; 64 Del. Laws, c. 335, § 1; 68 Del. Laws, c. 290, § 184.)

**§ 5139. Violations and penalties; enforcement.**

- (a) **Acts forbidden.** It shall be unlawful for any person to:
- (1) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;
  - (2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, report or affidavit provided for in this chapter;
  - (3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein, or to withhold or fail to remit moneys due under this chapter;
  - (4) Assign or attempt to assign a license to act as a special fuel dealer or a special fuel user;
  - (5) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to receive special fuel in this State into the supply tank or tanks of a motor vehicle from a person not holding a valid license as a special fuel dealer;
  - (6) Knowingly and with intent to evade or aid in the evasion of the tax imposed herein to deliver or place special fuel into the bulk supply tank or tanks of a person not licensed as a special fuel dealer or special fuel user or not a holder of a valid special fuel tax exemption marker without collecting the lawful tax imposed herein;
  - (7) Fail to keep and maintain the books and records required by this chapter;
  - (8) Knowingly and with intent to deceive, defraud or evade the tax imposed herein to permanently remove, replace, alter or render inoperable any volumetric measuring device or "totalizer" of any pump dispensing motor fuel subject to this chapter;
  - (9) Sign and deliver or cause to be delivered to the Motor Fuel Tax Administration any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.
- (b) **Penalties and remedies.** Any person violating subsection (a) of this section is guilty of a class A misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of special fuel tax amounting to more than \$500, then the violation shall constitute a class E felony. Any person who has once been convicted of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection (a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over those violations enumerated in subsection (a) of this section.
- (c) **Penalties are cumulative.** The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.

- (d) Enforcement. The Delaware State Police is authorized and directed to assist in the enforcement of this section.
- (e) License required. It shall be unlawful for any person to conduct any activities requiring a license under this chapter without a license or after a license has been surrendered, cancelled or revoked. Whoever violates this subsection shall, for the first offense, be fined not less than \$100 nor more than \$300, and for each subsequent offense, not less than \$300 nor more than \$500. The Justice of the Peace Courts shall have jurisdiction over this subsection.
- (30 Del. C. 1953, § 5139; 54 Del. Laws, c. 107; 61 Del. Laws, c. 141, § 15; 64 Del. Laws, c. 397, §§ 1-4; 66 Del. Laws, c. 273, §§ 1-3; 68 Del. Laws, c. 290, § 185.)

**§ 5140. Prohibiting use of dyed diesel fuel on highways: Violations and penalties.**

- (a) Notices with respect to dyed diesel fuel.
- (1) A notice, stating: "dyed diesel fuel, nontaxable use only, penalty for taxable use" shall be:
    - a. Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;
    - b. Provided by the seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer or terminal system and is not sold from a retail pump posted in accordance with the requirements of subparagraph c. of this paragraph;
    - c. Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.
  - (2) The notice required under subparagraph (1)(a) or (b) of this paragraph shall be provided at the time of the removal or sale and shall appear on shipping papers, bills of lading and invoices accompanying the sale or removal of the fuel.
  - (3) The Department may designate any federal notice provision which is substantially similar to a provision of this subsection as satisfying any notice requirement of this subsection.
- (b) Dyed diesel fuel not to be used on public highways.
- (1) A person may not operate a motor vehicle on the public highways of this State if the fuel supply tanks of the vehicle contain dyed diesel fuel unless permitted to do so under a federal law or regulation relegating to the use of dyed diesel fuel on the highways.
  - (2) A person may not sell or deliver any dyed, diesel fuel knowing or having reason to know that the fuel will be consumed in a highway use. A person who dispenses dyed diesel fuel from a retail pump that is not properly labeled with the notice required by subsection (a) of this section or who knowingly delivers dyed diesel fuel into the storage tank of such a pump shall be presumed to know the fuel will be consumed on the highway.
- (c) Enforcement. Any certified Diesel Compliance Officer or other person authorized by the Department may enter any place where fuels are used, produced or stored and may physically inspect any tank, reservoir or other container that can be used for the production, storage, use or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. Inspection may also be made of any equipment used for or in connection with the production, storage or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. Books, records and other documents may be inspected to determine tax liability. An agent may detain a vehicle, vessel or railroad tank car placed on a customer's siding for the use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. An agent may take and remove samples of diesel fuel in reasonable quantities necessary to determine the composition of the fuel.

- (d) Penalties. Any person who violates any provision of subsections (a) and (b) of this section including refusal to allow an inspection as set forth herein, shall for the first offense be fined not more than \$1,000, or imprisoned not more than 90 days, or both. For a second and any subsequent offense the person shall be fined not more than \$2,000, or imprisoned not more than 6 months, or both.
- (e) Disposition of fees, fines and forfeitures. All fees, fines and penalties collected in the enforcement of this section shall be paid into the Transportation Trust Fund established under Title 2.
- (f) Enforcement. The Delaware State Police is authorized and directed to assist in the enforcement of this section.
- (g) Cooperative agreements. The Secretary of the Department of Transportation may enter into cooperative agreements with other states and federal agencies for exchange of information and to perform joint investigations of alleged dyed diesel fuel violators.

(71 Del. Laws, c. 459, § 2.)

**THESE REGULATIONS ARE PROMULGATED BY THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY IN ORDER TO PROMOTE THE EFFECTIVE ENFORCEMENT AND ADMINISTRATION OF THE MOTOR FUEL AND SPECIAL FUEL TAX LAW (CHAPTER 51, TITLE 30, DELAWARE CODE) AS SPECIFICALLY AUTHORIZED IN SECTION 5118 AND SECTION 5138 RESPECTIVELY OF SAID LAW AND FURTHER AUTHORIZED IN THE BODY OF SAID LAW.**

## **SUBCHAPTER 1. GASOLINE**

### **A. DELEGATION:**

The routine administration of this subchapter is hereby delegated by the Secretary of Public Safety to the Director of the Division of Motor Fuel Tax except in the matters of appeal of tax assessments and promulgation of rules and regulations.

### **B. DEFINITIONS:**

1. "Retailer" shall include a service station, operator, broker, jobber, peddler or any person who offers gasoline for sale in Delaware and who does not possess a valid Delaware Distributor's license.
2. "Gasoline" as defined in section 5101(4), shall include the mixture of gasoline and ethyl alcohol (ethanol) commonly referred to as "gasohol".
3. "Gasohol" shall be a blend of nine (9) parts unleaded gasoline and one (1) part ethanol and shall be mixed by a distributor at time of delivery to a purchaser. A retail seller shall clearly label all pumps dispensing gasohol as such.

### **C. LICENSE:**

1. Application must be made by July 1st each year on Form MFT-2 for a Distributor's license or on Form MFT-6 for a Retailer's license. The license is required before any person can import, export, sell or distribute gasoline in this state. A business operating without a license may be issued a "Stop Sale" order until the proper license has been acquired.
2. A license issued by the Department shall be displayed in a conspicuous manner on the premises described on the license.
3. A license is not transferable to a new owner of a business and must be returned to the Department for cancellation if a business terminates, for whatever reason, during a license year.
4. A license application shall be reviewed within ten (10) state business days of receipt in this Division and immediately processed, if properly prepared and accompanied by the prerequisite surety bond. If the application is not complete (including bond), it will be returned to the applicant within the ten (10) day review period for the necessary information and/or documents required.

### **D. BOND:**

A surety bond (Form MFT-3) in the amount of an estimated three (3) months' tax liability is required before a Distributor's license can be issued. A bond is not required for a Retailer's license.

### **E. TAX EXEMPT SALES:**

1. Any agency of the Federal, State, County, or Municipal governments or a volunteer fire company or a volunteer ambulance service may purchase gasoline tax free, but first they must apply to the Department for tax exemption on Form MFT-16 in triplicate. Upon approval by the Department, two copies will be returned to the applicant - one for the applicant's files and one to be forwarded to the Distributor. The applicant's copy may be reproduced as needed for presentation to a new Distributor.
2. Any licensed Distributor intending to sell gasoline tax free to exempt purchasers enumerated in paragraph 1 must first require a tax exemption certificate from said purchaser. The gasoline sale will then be billed tax free to said purchaser by the Distributor. Gasoline cannot be purchased tax free with cash at the pump.

#### **F. REPORTING:**

1. Tax accrues on delivery of gasoline to a retail dealer (Section 5112) whether a sale or on consignment or whether the outlet is owned by the Distributor. This is interpreted to mean at the time of the "drop", i.e., when placed into the storage tank(s) of the retail outlet.
2. Ethanol used to produce gasohol is to be reported on the Distributor's monthly report in the same manner as gasoline.
3. The aggregate allowance for evaporation loss of gasoline as reported on line 14 of the Distributor's monthly report (MFT-1) is limited to a maximum of 1% of the total of the beginning inventory plus receipts over a twelve-month period. Loss in excess of this will be taxed. Tax, once paid, is not recoverable on gasoline lost or missing from a bulk storage tank.
4. A casualty loss of untaxed gasoline may be claimed if documentation is provided to the satisfaction of the Secretary of Public Safety.

#### **G. REFUNDS:**

1. Tax will not be refunded on gasoline used from the supply tank of a licensed vehicle even though that fuel is used off-highway to operate a power take-off or a separate motor. However, if the vehicle has a separate fuel tank for the loading-unloading operation or if the vehicle is equipped with a metering device which measures the gasoline used in loading and unloading operations when the vehicle is at a standstill, a refund may be claimed. Prior permission and reporting requirements must be secured from the Director before claiming such refunds.
2. As proof of gasoline purchased on refund applications (Form MFT-4), original invoices must be submitted bearing name of seller, name of purchaser, date of purchase, type of fuel, number of gallons purchased, price per gallon and total amount paid. They must also be marked "paid" and initialed by the seller. In the absence of original invoices for bulk purchases, an itemized statement from the seller indicating that payment has been made will suffice. In the case of gasoline purchased at a retail station in a can or drum for boats, planes or other non-highway use, the invoice must so indicate.
3. On refund applications, persons claiming to have purchased gasoline at a retail station, when the vehicles are normally fueled from claimant's own bulk tank or when a bulk tank is available on claimant's premises, must present copies of invoice tickets or credit cards to substantiate such retail purchases.
4. A claimant must indicate ALL gasoline purchased and ALL vehicles fueled from bulk tanks owned or controlled by him on a refund claim and be prepared to document off-highway use, if necessary.
5. A false statement on a refund claim with intent to mislead or defraud the state shall constitute grounds for voiding the entire claim and expose the claimant to criminal prosecution.
6. The Director has the right and the obligation to determine a reasonable number of gallons of fuel used per acre in each farm claim for refund. The burden of proof of actual fuel used in farming operations rests with the claimant. In the absence of such proof, the Director may adjust the refund claim to a reasonable figure for farm use.
7. No gasoline tax refund will be made to any person who owes this Division tax or an assessment, for any reason, until payment is received.

#### **H. RECORDS:**

The records of Distributors, as required in section 5123, may be microfilmed and these presented to auditors conducting periodic audits, providing the original records are maintained for three (3) years and are available when and if required during the audit. Equipment for viewing the microfilm must be provided by the taxpayer.

#### **I. STANDARDS:**

1. When analyzed by a laboratory, if the ethanol content of a sample of gasohol is significantly more or less than 10%, a "Stop Sale" will be issued to the seller until the situation is corrected.

2. Assuming a "Stop Sale" is issued for a specification failure of gasohol, adding straight ethanol to the storage tank to raise the ethanol content will not be permitted. The product must be pumped out and rebled at the proper temperature for homogenizing before replacing into storage.
3. For purposes of the administration of this chapter, the State of Delaware does hereby adopt the specifications of motor fuels as defined by the "American Society of Testing and Materials" (ASTM).

#### **J. INSPECTION:**

1. The inspection of records authorized under section 5123 shall be deemed to include the inspection of the physical premises, including storage facilities, fuel pump totalizers, the measurement of actual inventories and the taking of fuel samples for testing purposes for which reimbursement will be made.
2. Whenever an agent of the Department of Public Safety shall find any person marketing gasoline in violation of the provisions of Chapter 51, Title 30, Delaware Code, or the rules and regulations promulgated pursuant thereto, he may direct such person to cease such violation including further sale or distribution of motor fuel and issue a "Stop Sale" for the whole or any part of the operation until such violation has been corrected.
3. Substandard or contaminated gasoline or gasohol and inoperable or inaccurate pump totalizers shall be specific, but not exclusive, reasons to issue an immediate "Stop Sale". If, after such notification the violation continues, the Secretary of the Department of Public Safety shall refer the matter to the Attorney General of Delaware for legal action as specified in section 5128, Chapter 51, Title 30, Delaware Code.

#### **K. ELECTRONIC FUNDS TRANSFER (EFT)**

##### **1. Definitions:**

- (a) Electronic Funds Transfer (EFT) is a generic term applied to any of several means of making payments from one party to another through a series of instructions and messages communicated electronically (via computer) among financial institutions.
- (b) Automated Clearinghouse (ACH) is a system specifically established to facilitate the processing of electronic payments.
- (c) Automated Clearinghouse Credit (ACH-Credit) is defined as a transaction in which the taxpayer notifies its originating depository financial institution (ODFI) that it desires to make one or more payments to the receiving depository financial institution (RDFI).
- (d) Originating Depository Financial Institution (ODFI) is defined as the financial institution used by the taxpayer to make one or more payments through a series of instructions or messages.
- (e) Receiving Depository Financial Institution (RDFI) is defined as the bank designated by the State of Delaware (Wilmington Trust Company) to receive electronic funds transfer (EFT) payments.
- (f) Tax Payment (TXP) Format is the standardized method of identifying one or more payment types within an EFT transmission.

The TXP Format contains the following segments which identify the data that pertains to an EFT transmission such as FEI-License Number, tax type, tax period, amount type, and amount.

A TXP format may contain payment of tax, interest and penalty if it is in payment of the same federal employer identification number-license number, tax period and tax code.

- (g) Transaction is defined as the transmittal of the EFT payment accompanied with as many TXP formats as required to completely identify all components of the payment. Refer to "Electronic Funds Transfer Payment Requirements" under Section K.3.(a).
- (h) The separator is used to separate fields within a TXP format. The character to be used as a separator is the asterisk (\*).
- (i) Taxpayer FEI-License Number is the identification number used in the TXP format to identify the taxpayer originating the EFT payment. This identification number consists of your Federal Employer Identification number and the five (5) digit license number indicated in the upper right hand corner of the license issued to you by this Division. The FEI number and license number must be separated by a hyphen (-). A separate TXP format is required for each license held.
- (j) Tax type represents which kind of payment that is being transmitted. Code "051" is used exclusively for payment of motor fuel (gasoline) and "052" is used exclusively for payment of special fuel.

- (k) Tax Period is used to identify the tax period in which the payment covers. The digits from left to right represent year-month-date (YYMMDD) respectively.
- (l) Amount Type is used to identify the payment amount which follows. Identified values include "T" for tax, "P" for penalty and "I" for interest.
- (m) Amount identifies the dollar amount being remitted for each amount type by license and tax period. Since the computer program is right justified, the amount figure should always contain cents (cc).
- (n) Terminator (\) is used to end a single TXP format.
- (o) Account Name represents the name that the RDFI will credit with EFT funds being transferred. All funds are credited to the Delaware Transportation Trust Fund.
- (p) Bank Routing Number/Account Number represents the bank routing number for Wilmington Trust Company (031100092) and Delaware Transportation Trust Fund Account Number 2320-3294.
- (q) Total Payment represents the total monies that are being transferred by the taxpayers bank to the Delaware Transportation Trust Fund. The total amount of the transfer must agree with the payment for each EFT segment.
- (r) Fedwire is an alternative method of transferring payment from the taxpayers ODFI to the States RDFI.

## 2. Electronic Funds Transfer Payment Requirements:

- (a) Every company/firm with a combined (motor fuel and special fuel) minimum monthly tax liability of \$20,000 must electronically transmit their tax payments utilizing the ACH-Credit transfer method and follow the tax payment (TXP) format indicated in Section K.3.
- (b) Any newly licensed company/firm who meets the \$20,000 monthly minimum tax threshold requirement must implement the EFT program within two months of receipt of the license.  
Any company/firm currently licensed who meets the \$20,000 monthly minimum tax threshold requirement for the first time must implement the EFT tax payment program within two months of notification by this Division.
- (c) Any company/firm that has a combined minimum monthly tax liability of less than \$20,000 may electronically transmit their tax payments following the same procedures mentioned in K.2.(a)(b).
- (d) If payment of penalty and/or interest is for a period other than the tax payment period, a separate TXP format transmission is required for the penalty and/or interest payment.
- (e) Should a monthly tax period involve a zero payment or no activity tax return, a TXP payment format must be transmitted indicating "0" in the appropriate amount fields.
- (f) The use of EFT payments, whether required by regulation or on a voluntary basis, cannot be discontinued until requested and approved by the Director.
- (g) In cases of emergency, the Division will allow the use of Fedwire to electronically transmit tax payments. Prior approval must be obtained from the Department Secretary at least two (2) days prior to the due date so that tax data information may be obtained in order to credit the proper taxpayer account.
- (h) In lieu of making monthly EFT payments, tax returns and remittances may be hand delivered prior to 12:00 noon (Eastern Standard Time) on or before the due date.
- (i) All EFT payments must be received by the Receiving Depository Financial Institution before 2:00 p.m. (Eastern Standard Time) on or before the due date. An official state holiday calendar will be distributed annually to all licensed motor fuel and special fuel accounts. When the due date falls on a weekend or state holiday, the due date of the tax payment shall be the next following business day of the state.
- (j) In order to ensure that tax payments are timely credited to the state account, the Division recommends that the taxpayer notifies its originating bank (ODFI) at least two or three days prior to the impending EFT transaction. A pre-note (test) of the EFT system should take place at least ten days prior to the first EFT transmission in order to establish proper EFT transaction procedures.



3. Tax Payment (TXP) Format Requirements:

- (a) The following tax payment format must be used by required EFT accounts and those accounts who elect the EFT program on a voluntary basis.

	<b>TXP TAX REPORTING FORMAT</b>	<b>CHARACTERS / SPACES REQUIRED</b>
1	SEGMENT IDENTIFIER TXP	3 CHARACTERS
2	SEPARATOR *	1 CHARACTER
3	TAXPAYER FEI - LICENSE NO. 123456789-12345	15 CHARACTERS
4	SEPARATOR *	1 CHARACTER
5	TAX TYPE 051 OR 052	3 CHARACTERS
6	SEPARATOR *	1 CHARACTER
7	TAX PERIOD 910731	6 CHARACTERS
8	SEPARATOR *	1 CHARACTER
9	AMOUNT TYPE T	1 CHARACTER
10	SEPARATOR *	1 CHARACTER
11	AMOUNT 1111111111	10 CHARACTERS
12	SEPARATOR *	1 CHARACTER
13	AMOUNT TYPE I	1 CHARACTER
14	SEPARATOR *	1 CHARACTER
15	AMOUNT 1111111111	10 CHARACTERS
16	SEPARATOR *	1 CHARACTER
17	AMOUNT TYPE P	1 CHARACTER
18	SEPARATOR *	1 CHARACTER
19	AMOUNT 1111111111	10 CHARACTERS
20	TERMINATOR \	1 CHARACTER

(70)

TXP\*123456789-12345\*051\*910731\*T\*1111111111\*I\*1111111111\*P\*1111111111\

T = TAX

DELAWARE DIVISION OF MOTOR FUEL TAX

I = INTEREST

P = PENALTY

THE REPOSITORY BANK IS:

WILMINGTON TRUST COMPANY

WILMINGTON DELAWARE

BANK ROUTING NUMBER: 031100092

ACCOUNT NUMBER: 2320-3294

051 = MOTOR FUEL  
052 = SPECIAL FUEL

4. Tax Report/Schedule Requirements:
  - (a) Tax reports, including applicable schedules, must continue to be filed (U.S. postmarked) on or before the 25th of the month following the tax report month in order to be considered timely filed.

## SUBCHAPTER II. SPECIAL FUEL

### A. DELEGATION:

The routine administration of this subchapter is hereby delegated by the Secretary of Public Safety to the Director of the Division of Motor Fuel Tax except in the matters of appeal of assessments and promulgation of rules and regulations.

### B. DEFINITIONS:

Special fuel is any distillate fuel, alcohol or liquified petroleum gas suitable for propelling a motor vehicle when such fuel is placed into the supply tank of a motor vehicle licensed to operate on the highways or when such fuel is placed into the bulk supply tank(s) of a special fuel User or Dealer capable of redistribution into a motor vehicle.

### C. LICENSE:

1. Any person who is both a User and a Dealer of special fuel must be licensed as both. The combined monthly tax report filed by such persons must be submitted in duplicate.
2. Any person licensed as a special fuel Supplier is not required to be licensed as a special fuel User or Dealer even though he might be acting as such. Taxable use, retail sales and bulk sales will all be reported on the Supplier's monthly report (SF-9).
3. Only a *licensed* special fuel Supplier may supply or place special fuel into a bulk storage tank capable of redistribution which does not display a tax exemption sticker thereon. If a tax exemption sticker is not in evidence, the licensed Supplier *must* include the applicable tax in the price of the fuel and remit same to this Division monthly.
4. A distillate fuel supplier may place special fuel from a tank truck into the supply tank of a licensed motor vehicle not owned by himself *only* if (1) he is the holder of a special fuel Dealer's or Supplier's license authorizing him to collect the applicable tax or (2) the owner of the vehicle is a licensed User. An exception would be made only in case of emergency.
5. A license is not transferable and is valid until expired, cancelled or revoked.
6. Each bulk supply tank is considered to be a separate location for purposes of licensing and reporting same.
7. A license application shall be reviewed within ten (10) state business days of receipt in this Division and immediately processed if properly prepared and accompanied by the prerequisite surety bond. If the application is not complete (including bond), it will be returned to the applicant within the ten (10) day review period for the necessary information and/or documents required.

### D. BOND:

1. A surety bond must be procured by the applicant before a special fuel license can be issued. The bond (Form SF-3) must be in amount of approximately three (3) months' tax liability, but not less than \$500 nor more than \$100,000.
2. The special fuel bond shall cover the liability of a special fuel licensee whether the licensee is the holder of one or more special fuel licenses or whether the licensee terminates one type of special fuel license and acquires another.
3. The Director of the Division of Motor Fuel Tax assumes the right, in the case of a taxpayer with multiple locations and, therefore, multiple licenses, to require a separate surety bond for *each* such license when the maximum surety amount of \$100,000 for one bond does not cover the aggregate 3-months' tax liability of said taxpayer.

**E. REPORTING:**

1. A monthly tax report is required for each licensed location (tank) of special fuel. A User or a Dealer reports on Form SF-4. A Supplier reports on Form SF-9.
2. A licensed Dealer of special fuel must file a report (SF-24) of the meter (totalizer) reading of each diesel pump as of the last day of each month, on or before the 25th day of the following month.
3. A report is required for each month, or fraction thereof, in which a license is held whether or not there were transactions.
4. The aggregate allowance for evaporation loss of special fuel as reported on line 9 of the User/Dealer monthly report (SF-4) is limited to a maximum of 1/2 % of the total of the beginning inventory plus receipts over a twelve-month period. Tax, once paid, is not recoverable on special fuel lost or missing from a bulk storage tank.

**F. TAX EXEMPTION:**

1. Special fuel placed into a *licensed* motor vehicle is tax exempt *only* when used by federal, state, county or municipal governments or by volunteer fire companies, or by volunteer ambulance services in their official vehicles.
2. Special fuel placed into reefer units is tax exempt.
3. Special fuel delivered or placed into a bulk supply tank capable of redistribution is *not* tax exempt *unless* there is a special fuel tax-exemption sticker affixed to the pump. This sticker is obtained by the user at no charge from the Division of Motor Fuel Tax by completing an application (SF-8) attesting to the non-taxable use of the fuel thus stored.
4. Any distillate fuel supplier may supply or place fuel into a bulk storage tank which displays a tax-exemption sticker. However, only a *licensed* special fuel Supplier may supply a tank with no sticker affixed thereto. The Supplier must then include the applicable tax in the price of the fuel delivered or placed into said tank.
5. A licensed User or Dealer will automatically receive a tax-exemption sticker with his license which must be affixed to his bulk storage tank or pump to indicate to a special fuel Supplier that fuel may be placed into said tank tax-free.

**G. RECORDS:**

1. Every licensed special fuel User shall keep fuel invoices, inventory records, and licensed vehicle odometer readings and shall maintain a record book or log on or near the fuel pump in which to record special fuel placed into his motor vehicles for reporting purposes. Licensed Users paying the applicable tax based upon receipt of special fuel into storage must only keep fuel invoices. If special fuel is occasionally purchased at retail stations for vehicles, purchase receipts must be maintained for audit purposes.
2. Every licensed special fuel Dealer must keep special fuel invoices, inventory records, copies of special fuel sales tickets and shift reports to substantiate the monthly report filed. He must also record the pump meter (totalizer) readings on the last day of each month for reporting sales monthly. All non-taxable special fuel sales must be substantiated by a sales ticket indicating the nature of the sale.
3. Every licensed special fuel Supplier must provide sales invoices to their customers indicating seller's name, purchaser's name, date of sale, type of fuel, number of gallons sold, price per gallon and the statement "State Tax Included" or "State Tax Not Included".

#### **H. STANDARDS:**

1. For purposes of the administration of this sub-chapter, the State of Delaware does hereby adopt the specifications of special fuels as defined by the "American Society of Testing and Materials" (ASTM).

#### **I. INSPECTION:**

1. The inspection of records authorized under section 5138(b) shall be deemed to include the inspection of the physical premises of the licensee, including storage facilities, fuel pump totalizers, the measurement of actual inventories and the taking of fuel samples for testing purposes, for which reimbursement will be made.
2. Whenever an agent of the Division of Motor Fuel Tax shall find any person marketing special fuel in violation of the provisions of Chapter 51, Title 30, Delaware Code, or the rules and regulations promulgated pursuant thereto, he may direct such person to cease such violation including further sale or distribution of special fuel and issue a "Stop Sale" for the whole or any part of the operation until such violation has been corrected.
3. Substandard or contaminated special fuel and inoperable or inaccurate pump totalizers shall be specific, but not exclusive, reasons to issue an immediate "Stop Sale". If, after such notification the violation continues, the Secretary of Public Safety shall refer the matter to the Attorney General of Delaware for legal action as specified in section 5139, Chapter 51, Title 30, Delaware Code.

#### **J. LIQUIFIED PETROLEUM GAS:**

The following formula has been adopted for conversion of Liquified Petroleum Gas for purposes of tax reporting:

One pound of LP Gas = .2359 gallons

One gallon of LP Gas = 4.239 pounds

Source of this equation is *Practical Guide to LP Gas Utilization*; E. A. Clifford, Editor; Harbrace Publication.

#### **K. PRESUMPTION:**

Any special fuel User, Dealer or Supplier whether licensed or unlicensed, who maintains bulk storage of special fuel and who also owns (or controls) a licensed diesel motor vehicle or vehicles, is presumed to be fueling such vehicles from his own bulk storage facilities. If exception to this regulation is claimed by the User/Dealer/Supplier, he must be prepared to produce retail fuel purchase tickets to verify same. Recording of the vehicle odometer readings would also be advised to substantiate fuel used.

#### **L. ELECTRONIC FUNDS TRANSFER (EFT)**

For purposes of administering this section of the promulgated regulations with respect to special fuels, the same definitions, tax payment requirements, tax payment format requirements and tax report/schedule requirements as outlined under Section K. (Subchapter I) motor fuels shall apply.

## **M. ALTERNATIVE FUEL CREDITS**

1. Companies, organizations or entities must register with the Director, Motor Fuel Tax Administration or his designee to use non-taxed alternative special fuel in licensed motor vehicles involved in a pilot program, test program or demonstration program by documenting the following information.
  - (a) The total number of vehicles in your firms registered fleet.
  - (b) The number of alternatively fueled vehicles in the fleet including the types of alternative fuel used.
  - (c) The number of alternative vehicles to be considered as part of the demonstration program, test program or pilot program.
  - (d) Identify any alternatively fueled motor carrier class vehicles intended to be made a part of the demonstration program, test program or pilot program.
  - (e) The nature of the data to be collected on fuel economy, performance and air emission test for program analysis as required by Title 30, Chapter 51, Section 5131(11), Delaware Code. PLEASE NOTE: Any company, organization or entity that is not collecting and analyzing data on alternative fuel economy and performance will be determined not to be conducting a test program to determine the commercial feasibility of alternatively fueled vehicles.
  - (f) Identify all source(s) of supply for alternative fuel purchases including name, address and phone number.
2. Companies, organizations or entities engaged in pilot programs, test programs or demonstration programs to determine the commercial feasibility of alternatively fueled vehicles must either:
  - (a) Be licensed as a Special Fuel User in accordance with Title 30, Chapter 51, Subchapter II, Delaware Code, or
  - (b) Purchase its alternative fuel from a licensed Special Fuel Supplier or Dealer who is capable and willing to report separately the alternative fuel sold as a motor fuel in relation to the approved demonstration program. The licensed Special Fuel Supplier or Dealer is responsible for the maintenance of records to support the non-taxed demonstration program alternative fuel distribution. Only the alternative special fuel placed into the supply tanks of vehicles included in an authorized demonstration program as authorized by the Director, Motor Fuel Tax Administration shall be tax exempt.
3. In the event that a company, organization or entity conducting an authorized demonstration program operated "dual fuel vehicles", only the alternative special fuel used to propel the subject vehicle will be exempt from the motor fuels excise tax. All other conventional fuel used to propel the dual fuel vehicle shall be subject to the motor fuels excise tax.
  - (a) "Dual fuel vehicle" is considered a vehicle that is capable of operation on more than one type of fuel. "Conventional fuel" is considered gasoline (in all formulation states) and special fuel middle distillates to include diesel, fuel oil and kerosene (in all formulation states).
4. The number of vehicles involved in pilot programs, test programs or demonstration programs cannot exceed the greater of 10 vehicles or 10 percent of the taxpayers fleet. The number of vehicles authorized to be included in such pilot programs, test programs or demonstration programs shall be calculated based on the firms registered fleet.
5. Companies, organizations and entities conducting an authorized pilot program, test program or demonstration program shall identify and report to the Motor Fuel Tax Administration the specific vehicles included in such a program by the company's vehicle number or license plate number. Any vehicle changes must be reported to the Motor Fuel Tax Administration.

Companies, organizations or entities with greater than 10 percent of their registered fleet converted to operate on alternative fuel shall not be permitted to regularly rotate the vehicles involved in such pilot programs, test programs or demonstration programs.

6. Any Delaware registered motor carrier class vehicle included in a pilot program, test program or demonstration program, into which non-taxed alternative special fuel is placed, is not exempt from motor carrier reporting. Companies, organizations or entities operating a fleet of motor carrier class vehicles, will be required to have a separate motor carrier registration for the reporting of alternatively fueled motor carrier class vehicles involved in demonstration programs. Quarterly motor carrier tax reports for vehicles included in demonstration programs are to be calculated so as to indicate no tax liability and no credit accrual by reporting Delaware fuel purchases on line 7a equal to the calculated Delaware fuel usage. No over purchase credit refunds will be established based on non-taxed alternative special fuel placed into vehicles included in demonstration programs. Also, no additional motor carrier road usage tax liabilities will be established if the vehicles are operated interstate.
7. The effective date for application of excise tax credits or refunds on special fuel used in alternatively fueled vehicles shall be October 29, 1993. Retroactive excise tax credits and/or refunds may be granted provided the firm requesting the refund or credit registers with the Motor Fuel Tax Administration in accordance with M.1.



**THIS BOOKLET IS PROVIDED TO SERVE AS QUICK REFERENCE FOR THE PUBLIC IN COMPLYING WITH THE MOTOR FUEL AND SPECIAL FUEL TAX LAW OF THE STATE OF DELAWARE. IN CASE OF ERROR OR OMISSION, THE LAW AS RECORDED IN CHAPTER 51, TITLE 30, DELAWARE CODE, SHALL PREVAIL.**

**THIS BOOKLET ALSO PRESENTS THE RULES AND REGULATIONS PROMULGATED BY THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY IN ORDER TO PROMOTE THE EFFECTIVE ENFORCEMENT AND ADMINISTRATION OF SAID LAW.**

**THE LAW AND PROMULGATED RULES AND REGULATIONS CONTAINED HEREIN WERE EFFECTIVE AT THE TIME OF THE PRINTING OF THIS BOOKLET IN DECEMBER, 2000.**